REMARKS

The above amendments and following remarks are submitted in response to the Official Action of the Examiner mailed January 30, 2006. Having addressed all objections and grounds of rejection, claims 1-25, being all the pending claims, are deemed in condition for allowance. Entry of these amendments and reconsideration to that end is respectfully requested.

The Examiner has rejected claims 1, 6, and 11-24 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,583,561, issued to Baker et al (hereinafter referred to as "Baker") in view of U.S. Patent No. 5,132,992, issued to Yurt et al (hereinafter referred to as "Yurt"). This rejection is respectfully traversed for failure of the Examiner to present a *prima facie* case of obviousness as specified by MPEP 2143 for the reasons provided below.

To make a *prima facie* case of obviousness, MPEP 2143 requires the Examiner to provide evidence and argument showing: 1)motivation to make the alleged combination; 2)reasonable likelihood of success of the alleged combination; and 3)all claimed elements within the alleged combination. The Examiner has failed to make any of these three required showings. Therefore, because the Examiner has not made a *prima facie* case of obviousness, Applicants need not and indeed cannot offer appropriate evidence and argument in rebuttal.

With regard to claim 1, the Examiner admits:

> Baker fails to disclose a plurality of video servers directly coupled to the transaction server and temporary memory directly coupled to the video server and the transaction server.

Apparently attempting to show motivation, the Examiner then goes on to say:

> Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Baker to utilize the direct connection to the transaction server as take (sic) by Baker, for the advantage of spreading out the load generated by a number of users by utilizing a plurality of video servers.

To the extent understandable, this statement is inadequate as a matter of law, because it is inconsistent with the specific teachings of the references.

Baker, column 6, lines 11-16, provides that the alleged combination is specifically inconsistent with the object of Baker stating:

> Yet another object of this invention is to utilize a high-performance enterprise server computer system and asynchronous transfer mode communication devices to selectively distribute encoded, compressed, digital video data in real-time over a public switched integrated-services network to a large number of remotely located viewer sites.

In short, not only does Baker not desire "the advantage of spreading out the load generated by a number of users by utilizing a plurality of video servers" as alleged by the Examiner, Baker actually teaches the advantages of using a large mainframe computer system instead. The system taught by Baker

uses the same mainframe computer to access, "spool", and "stream" the requested program without any anticipated need for "spreading out the load" as alleged by the Examiner.

Again, the Examiner fails to even mention his obligation to show reasonable likelihood of success. The requirement to show evidence and/or argument establishing reasonable likelihood of success is specifically levied upon the Examiner to present a *prima facie* case of obviousness.

Further with regard to claim 1, for example, claim element c requires that the "transaction server spools said different video on demand programs from said data base storage to said temporary video storage memory" and claim element d requires that "said plurality of video servers....stream said spooled different video on demand programs from said temporary video storage memory to said plurality of subscriber receivers". In other words, claim 1 requires that "spooling" is accomplished by the "transaction server" and that "streaming" is accomplished by the "plurality of video servers".

In Baker, both of these functions are accomplished by the same entity, "video server 12". In the claimed invention, both the "transaction server" (i.e., "spooling") and the "plurality of video servers" (i.e., "streaming") handle video information. In Baker, all video information is handled by "video server 12". The Examiner continues to read the claimed "transaction server"

element on to "control server" 54 of Baker. Though both the claimed "transaction server" and "control server" 54 of Baker can handle subscriber requests, "control server" 54 of Baker cannot handle video data.

Baker specifically disclaims that "control server" 54 handles any video. Column 10, lines 50-60, wherein Baker states in part:

> Control server 54 may....coordinate the access of the multiple Video Servers to the Video Library.....

Not only does Baker not disclose that "control server" 54 ever handles the video programming data, it specifically states that it does not.

This distinction was previously described to the Examiner in detail. In a prior response to Applicants' previous arguments, the Examiner earlier stated:

> Likewise, claim 1 requires that the server spools the programs from the database storage to video storage memory, there is no mention of direct access in claims 1 and 6 as argued by application.

It was exceedingly difficult to understand why the Examiner equated "direct coupling" with the function of "spooling". Nevertheless, independent claims 1, 6, 11, 16, and 21 were previously amended to address this concern of the Examiner, even if not well founded.

As if to divert the discussion from Applicants' claimed invention wherein the claimed "transaction server" spools video

programs into the claimed "temporary video storage memory" and the claimed "plurality of video servers" stream the spooled video data from the claimed "temporary video storage memory", the Examiner addresses "direct coupling" by making the clearly erroneous statement:

> Yurt discloses a video on demand system in figure 1c in which a **remote** order processing and item data base (transaction server) 300 is directly coupled to a number of video servers 200..... (emphasis added)

This statement is clearly erroneous, because element 300 is specifically disclosed as **REMOTE**. Yurt discloses at column 4, lines 5-7:

> Remote order processing and item database 300 preferably enables users to access desired items by remote communication.

Communication from element 300 is performed via "transmission system" 100 (see Fig. 1c). The nature of "transmission system" 100 is defined at column 3, lines 54-58, which states:

> A user of the transmission and receiving system of the present invention preferably accesses transmission system 100 by calling a phone number or by typing commands into a computer.

It is disingenuous for the Examiner to allege that such a "dial-up" network constitutes the claimed "direct coupling".

Therefore, the rejection of claim 1, and all claims depending therefrom, is respectfully traversed for failure of the Examiner to make any of the three showings required by MPEP 2143.

In rejecting independent claim 6, the Examiner makes a

similar clearly erroneous finding of fact. He states:

> A transaction server 54 (column 10, lines 37-64) responsively coupled to said data base storage system 12 and said plurality of subscriber receivers 22, capable of receiving said plurality of service requests, accessing said plurality of video programs corresponding to the server requests from said database storage system (column 7, lines 45-55, column 9, lines 1-4) spooling into memory 38 (column 8, line 61-column 9, line 3; 54-68);

This finding is clearly erroneous, because control server 54 of Baker cannot access the video programs from the database storage system, as explained above in detail. Only Video Server 12 can perform such access (see Fig. 1). Furthermore, main storage unit 38 is located within video server 12 (see Fig. 2), and therefore cannot be directly accessed by control server 54. In addition, the cited functionality of column 7, lines 45-55; column 9, line 9; and column, lines 54-58, is all accomplished within "video server" 12, wherein Fig. 2 shows the internal hardware of "video server" 12[1] and Fig. 3 shows the software of "video server" 12[2].

As discussed above in detail, the alleged combination of Baker with Yurt is particularly confusing because the "remote" element 300 is certainly not directly coupled anything. Therefore, the rejection of amended claim 6, and all claims depending therefrom, is respectfully traversed.

Claim 11 is an independent apparatus claim having "means-

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[1]See column 5, lines 55-56.

[2]See column 5, lines 59-61.

plus-function" limitations. It requires separate and distinctive "temporarily storing means", "spooling means", and "streaming means". These elements are all incorporated within a single entity, video server 12, of Baker. Fig. 2 shows that main memory unit 38, which the Examiner has found to be the "spooling means" is a part of video server 12. Similarly, "streaming" is performed by video server 12. Even though the Examiner somehow finds network interface 18 to be a "streaming means", he cites column 10, lines 40-44, which clearly shows that video server 12 performs the "streaming" function. As with the other independent claims, claim 11 is limited by the "direct" coupling previously suggested by the Examiner, in response to which he now clearly erroneously alleges that remote, dial-up network coupling of Yurt is somehow "direct coupling".

The rejection of amended claim 11, and all claims depending therefrom, is respectfully traversed.

Claim 12 depends from claim 11 and further limits the "generating means". Because Baker does not anticipate claim 11 from which claim 12 depends, it cannot anticipate claim 12 which is further limited by unique limitations. The rejection of claim 12 is respectfully traversed.

Claim 13 depends from claim 12 and further limits the "identifying means". In making his rejection, the Examiner makes the finding:

> Regarding claim 13, Baker discloses that video server 12 or Control server 54 acts as a transaction gateway.

This finding is a clear error of law, because the Examiner has found that control server 54 of Baker is the claimed "identifying means" in his rejection of claim 11. Therefore, the suggestion by the Examiner that video server 12 "acts as a transaction gateway" by citing column 7, lines 28-55, Fig. 4, and column 10 lines 56 through column 11, line 22. is legally irrelevant.

Furthermore, in rejecting claim 2, the Examiner explicitly admits that "the combination of Baker and Yurt does not disclose a transaction gateway.....". The rejection of claim 13 is respectfully traversed for improper application of controlling law.

Claim 14 depends from claim 13 and further limits the "identifying means". In making his rejection, the Examiner confusing states:

> Regarding claim 14, Baker discloses that <u>video server 54</u> processes subscriber transactions (column 10, lines 54-64). (emphasis added)

This statement is confusing, because Baker has no "video server 54". To the extent, the Examiner really means "control server 54", his finding is clearly erroneous and unsupported by the citation, which ascribes the claimed functionality to "video server 12". To the extent that the Examiner really means "video server 12", his finding is incorrect as a matter of law, because claim 14 further limits the "identifying means", which has been

found by the Examiner to be "control server 54" in his rejection of claim 11 from which claim 14 depends. Though this ambiguity has been previously shown to the Examiner, he has chosen to ignore the issue. The rejection of claim 14 is respectfully traversed.

Claim 15 depends from claim 14 and further limits the "identifying means", which the Examiner has found to be embodied in control server 54 of Baker. In making his rejection the Examiner states:

> Regarding claim 15, Baker discloses that video server 12 is a Unisys mainframe (column 8, lines 42-48).

This statement is legally irrelevant because it does not address the "identifying means" (found by the Examiner to be control server 54 of Baker) which is further limited by claim 15. Again, this matter has been previously indicated to the Examiner, and again he has chosen to ignore this clear error of law. Therefore, the rejection of claim 15 is respectfully traversed as legally irrelevant.

Claim 16 is an independent method claim. Applicants' invention requires that the "transaction server" perform the "determining" and "assigning" steps. As explained above in detail, Baker explicitly teaches away from this method of operation. The rejection of claim 16, and all claims depending therefrom, is respectfully traversed.

Claim 17 depends from claim 16 and is further limited by a

user function handled by the "transaction server". The Examiner ignores the claim limitation and rather cites Baker column 12, lines 7-17, which describes how video server 12 handles similar user functions. The rejection of claim 17 is respectfully traversed for failure of the Examiner to address the claimed invention.

Claim 18 depends from claim 17 and is further limited by a user function handled by the "transaction server". The Examiner ignores the claim limitation and rather cites Baker column 12, lines 7-17, which describes how video server 12 handles similar user functions. The rejection of claim 18 is respectfully traversed for failure of the Examiner to address the claimed invention.

Claim 19 depends from claim 18 and is further limited by a user function handled by the "transaction server". The Examiner ignores the claim limitation and rather cites Baker column 16, lines 5-9, which requires that video server 12 handle such user functions. The rejection of claim 19 is respectfully traversed for failure of the Examiner to address the claimed invention.

Claim 20 depends from claim 19 and is further limited by a user function handled by the "transaction server". The Examiner ignores the claim limitation and rather cites Baker column 7, lines 33-51, which requires that video server 12 handle such user functions. The rejection of claim 20 is respectfully traversed

for failure of the Examiner to address the claimed invention.

In rejecting independent apparatus claim 21, the Examiner clearly erroneously finds element c of the claimed invention which requires the claimed "transaction server" to perform the spooling stating:

> ....wherein said software controlled transaction server 54 spools a requested on of said plurality of video programs.... (column 10 lines 54-64).

As explained above in detail, Baker teaches that video server 12 both "spools" the program and "streams" the program. Furthermore, Baker has no discussion about any "software" of "control server" 54. Though these issues have been previously explained to the Examiner, he persists in ignoring the clear teaching of the prior art. The rejection of claim 21, and all claims depending therefrom, is respectfully traversed as based upon clearly erroneous findings of fact.

Claim 22 depends from claim 21 and further limits the "software controlled transaction server" in accordance with the handling of video programming data. As explained above in detail, Baker teaches that video programming data is handled only by video server 12. The rejection of claim 22 is respectfully traversed.

Claim 23 depends from claim 22 and further limits the distribution system. Because the alleged combination cannot meet all of the limitations of claim 22 from which claim 23 depends,

it cannot meet the limitations of claim 23 including these additional unique limitations. The rejection of claim 23 is respectfully traversed.

Claim 24 depends from claim 23 and further limits the user request system. Because the alleged combination cannot meet all of the limitations of claim 23 from which claim 24 depends, it cannot meet the limitations of claim 24 including these additional unique limitations. The rejection of claim 24 is respectfully traversed.

Claims 2-5 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Baker in view of Yurt in view of U.S. Patent No. 5,826,085, issued to Bennett et al (hereinafter referred to as "Bennett") and further in view of U.S. Patent No. 5,519,435, issued to Anderson (hereinafter referred to as "Anderson"). This ground of rejection is respectfully traversed for failure of the Examiner to present a *prima facie* case of obviousness as specified by MPEP 2143.

Claim 2 depends from claim 1 and further limits the software architecture of the transaction server. The Examiner admits that the alleged combination of Baker and Yurt does not have the limitations of claim 2. He somehow finds that the untenable further alleged combination with Bennett and Anderson has these limitations without having the architecture of Baker or Applicants' claimed invention.

With regard to motivation to combine Bennett, the Examiner states:

> Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Baker and Yurt to utilize the middleware environment of Bennett thus enabling applications on different machines to be seamlessly interconnected. (Emphasis added)

This is precisely the unsupported conclusion attacked by the Court of Appeals for the Federal Circuit stating in part:

> Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence". *In re Dembiczak*, 175 F.3d 994, 50 U.S.P.Q. 2d 1614 (Fed. Cir. 1999.

Furthermore, the system taught by Baker teaches the advantages of using a single mainframe computer to perform all video handling operations (i.e., accessing, spooling, and streaming). Thus, even if Bennett teaches "enabling applications on different machines to be seamlessly interconnected", it is irrelevant, because the primary reference (i.e., Baker) teaches not to provide such an interconnection.

Thus, even though Baker states as its object to use a "high-performance enterprise computer system" as a video server, the Examiner disingenuously states:

> Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Baker, Yurt and Bennet (sic) to utilize the PC of Anderson as a video server, for the advantage of providing a low cost server which provides high-speed performance via a RAID array.

Ignoring the clear teaching of the references as suggested by the

Examiner is clear error as a matter of law.

The Examiner completely ignores his obligation under MPEP 2143 to provide evidence and/or reasoning to show "likelihood of success" of the alleged combination.

Furthermore, the alleged combination does not meet all of the claimed limitations, because the Examiner bases his rejection on clearly erroneous findings of fact. The Examiner states:

> Bennett discloses in Figure 2, a VOD system with .... a VOD server 234.... (emphasis added)

Anyone viewing Fig. 2 of Bennett will see that **SERVICES** 235 contains VIDEO ON DEMAND **SERVICE** 234 but shows no VOD "server".

The rejection of claim 2 is respectfully traversed for failure of the Examiner to present a *prima facie* case of obviousness.

Claim 3 depends from claim 2 and further limits the "transaction server". The Examiner makes the legally irrelevant statement that Baker shows the limitations relative to "video server 12". However, as the Examiner clearly admits, the alleged combination does not show the limitation with regard to "control server 54" which the Examiner alleges to be the claimed "transaction server". The rejection of claim 3 is respectfully traversed for failure of the Examiner to present a *prima facie* case of obviousness.

Claim 4 depends from claim 3 and further limits the claimed "transaction server". In making his response, the Examiner makes

the legally irrelevant statement:

> Regarding claim 4, Baker discloses that video server 12 may be a Unisys mainframe system (column 8, lines 43-51).

This statement is legally irrelevant, because claim 4 further limits the "transaction server" which the Examiner has found to be "control server" 54. The rejection of claim 4 is respectfully traversed.

Claim 5 depends from claim 4 and further limits the "transaction server". In support of his rejection, the Examiner makes clearly erroneous findings of fact stating:

> Regarding claim 5, Baker discloses that the transaction server may spool the video (column 8, line 61-column 9, line 3) and that the format can be MPEG 2 (column 7, lines 9-16). (emphasis added)

Again, the Examiner cites functions that Baker teaches should be performed by the video server 12, as if they were performed by a transaction server as claimed. Fig. 2 clearly shows that all of the structure and functionality cited by the Examiner to support his rejection resides within video server 12. Though this clear error has been brought to the Examiner's attention on a number of occasions, he continues to ignore it. The rejection of claim 5 is respectfully traversed.

Claims 7-10 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Baker in view of Yurt and further in view of Bennett. This ground of rejection is respectfully traversed for failure of the Examiner to present a *prima facie* case of

obviousness as specified by MPEP 2143.

Claim 7 depends from claim 6 and further limits the claimed "transaction server". In making his rejection, the Examiner makes the legally irrelevant statement that Baker shows similar limitations with regard to video server 12. However, the Examiner makes no showing that the alleged combination meets the limitations as claimed. That the Examiner continues to confuse the claimed functions of the "transaction server" and "video server" has been brought to the Examiner's attention on numerous occasions. Yet, the Examiner continues to ignore this distinction. The rejection of claim 7 is respectfully traversed.

Claim 8 depends from claim 7 and uniquely limits the transaction server. Because the alleged combination cannot meet the limitations of claim 7 from which claim 8 depends, it cannot meet the further limitations of claim 8. The rejection of claim 8 is respectfully traversed for failure of the Examiner to present a *prima facie* case of obviousness.

Claim 9 depends from claim 8 and further limits the "transaction server". In making his rejection, the Examiner again cites material from Baker which relates to video server 12. As a result, the Examiner bases his rejection of claim 9 upon clearly erroneous findings of fact. Baker does not disclose "spooling" by the alleged "transaction server" (i.e., control server 54). The rejection of claim 9 is respectfully traversed.

Claim 10 depends from claim 9 and further limits the claimed "transaction server". The Examiner makes his rejection alleging that Baker teaches the same limitations with respect to video server 12. As a result, his findings are legally irrelevant, because they do not address the claimed invention. The rejection of claim 10 is respectfully traversed.

Claim 25 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Baker in view of Yurt and further in view of U.S. Patent No. 6,878,881, issued to Wilcox (hereinafter referred to as "Wilcox"). This ground of rejection is respectfully traversed for failure of the Examiner to present a *prima facie* case of obviousness as required by MPEP 2143.

In making his rejection, the Examiner concludes "motivation" rather than meeting his burden of presenting evidence and/or reasoning showing motivation. The Examiner completely ignores the requirement to show "reasonable likelihood of success". The rejection of claim 25 is respectfully traversed for failure to present a *prima facie* case of obviousness.

Having thus responded to each objection and ground of rejection, Applicants respectfully request entry of this amendment and allowance of claims 1-25, being the only pending claims.

Please charge any deficiencies or credit any overpayment to Deposit Account No. 14-0620.

Respectfully submitted,

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By their attorney,

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